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THE SOURCES OF THE MEXICAN ACTA CONSTITUTIVA*

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The Mexican scheme of government since the earliest days of the republic has been regarded as but an ill adapted copy of that of the United States. Within the United States this belief has been largely founded upon the recognized influence of our form of government upon the South American republics. Inasmuch as we have been wholesale borrowers from the older eastern states in the erection of our state governments, we have been led to impute a similar character to the earliest governmental architects of Mexico.

This deep rooted belief has had many able exponents. Foreign publications, both American and European, during the troubled times of 1824 and 1825 spoke of the new government as an imitation of that embodied in the constitution of the United States.¹ No less a person than Henry Clay, in the instructions given to Joel R. Poinsett, our first minister to Mexico, took this point of view and counselled Poinsett to advise those in power as to the manner in which a republic should be conducted.²

Mr. J. Q. Dealey appears to have been the first student to disagree with this attitude and to indicate anything of the extent of the Spanish influence.³ In a brief comparison of the constitution of Spain, promulgated at Cadiz, March 19, 1812, with the Mexican constitution of 1824, Mr. Dealey has pointed out a marked parallelism and an essential similarity. Mr. Dealey concludes that, "the real basis of the Mexican constitution was the Spanish constitution of 1812 and the departures from the

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¹*North American Review*, January, 1825, p. 78. "The present federal system of government instituted in imitation of that of the United States is quite uncertain and on the whole may be considered as rather an unfortunate step at so early a stage. The affairs of Venezuela, before the union, went on very indifferently under this system."

²*American State Papers, Foreign Relations*, V, 908.

³Texas State Historical Association, *THE QUARTERLY*, III, 161-169.

latter were due largely to the adoption of the form of a federal republic, which compelled, to some extent, the imitation of the American model. But even in so imitating, the framers of the constitution endeavored to mould the unfamiliar institutions of the North to the familiar institutions of Spain."⁴

This study is based upon the *Acta Constitutiva*, which was adopted January 31, 1824. This act was the basis upon which the constitution of 1824, as well as all other Mexican constitutions recognizing the federal principle, have been erected. Its skeletal character enables one to see in it more clearly than in the maze of detail of a more elaborate fundamental law the intention of the makers of the constitution. Furthermore, those responsible for the adoption of the *Acta Constitutiva* were likewise responsible for the adoption of the constitution of 1824.

Merely an inspection of the *Acta Constitutiva* and of the Spanish constitution of 1812 reveals parallelism of treatment and, at times, the use of identical language. The *Acta Constitutiva*, being but a framework upon which the constitution of Mexico was later to be constructed, does not contain all of the titles to be found in the constitution of 1812 but the general order of treatment is the same in all essentials. This similarity is to be noted, not only in the broad general outlines of the two documents, but descends to the sub-structure, as may be illustrated by the opening articles of both.

Capítulo I, Título I, of the Spanish constitution of 1812 states,

Article 1. "The Spanish nation is formed by the union of the Spaniards of both hemispheres."

Article 2. "The Spanish nation is free and independent and is not, nor can it become the patrimony of any person or family."

The *Acta Constitutiva*, Título I, states,

Article 1. "The Mexican nation is composed of the provinces included in the viceroyalty hitherto called New Spain, the Captain Generalcy of Yucatan and the 'provincias internas de oriente y occidente.'"

Article 2. "The Mexican nation is free and independent of Spain and of other powers and is not the patrimony of any person or family."

⁴Texas State Historical Association, *THE QUARTERLY*, III, 166-167.

Article 3. "The sovereignty resides essentially in the nation and to it belongs the right to establish the fundamental laws."

Article 3. "The sovereignty resides originally and absolutely in the nation and to it belongs the exclusive right to adopt and to establish by means of its representatives the form of government and the fundamental laws that appear most convenient for its conservation and greater prosperity, modifying and varying them according to its convenience."

In the proposed organization of the legislative branch of government, the displacement of the Spanish unicameral system by the bicameral is at once noticed. From the debates in the constituent assembly, which enacted the constitution of 1824, it is apparent that the congress of the United States was the model followed. In the constituent assembly it was proposed that there be created a House of Deputies and a Senate which should be upon an equal footing, save that financial measures should arise in the lower house. In the attack made by Godoy and others, it was pointed out that this proposal was but an adaptation of the system in use in the United States.⁵ Gómez, in defending the measure, admitted the charge and proceeded to quote at length from the constitution of the United States.⁶

The actual provisions of the *Acta Constitutiva* are:

Article 10. "The legislative power of the federation shall reside in a Chamber of Deputies and a Senate which shall make up the General Assembly."

Article 11. "The members of the Chamber of Deputies and of the Senate are to be chosen by the citizens of the States in the manner provided by the constitution."

Article 12. "The basis of election of representatives to the House of Deputies shall be according to population. Each State shall elect two senators to be prescribed by the constitution."

The Spanish constitution of 1812 reflects the leaven of the French political thought of the time. Its recognition of the right of the Spanish people to control their affairs through the cortes caused the constitutions of Spain, Mexico, and the United

⁵*Diario de los Debates*, May 5, 1824.

⁶*Ibid.*, May 6, 1824.

States to be very much alike in their grants of power to their legislative bodies. An attempt at analysis of the powers to be granted to the Mexican congress fails to reveal any marked leaning toward either the Spanish or American precedent.

In some few details the Mexican congress was to possess less power than the congress of the United States. No mention is made of congressional power to create courts inferior to the Supreme Court, to establish uniform laws regarding bankruptcy, nor to establish postoffices or post roads. The most marked point of difference lies in the absence of any grant that might be compared with our "necessary and proper" clause.

In the power of congress to control all external commerce, to regulate internal commerce, to regulate the finances of the nation, to control the army and navy,—the influence of the United States is seen. The Spanish constitution of 1812 still entrusted the control of the army and navy to the king.⁷ The *Acta Constitutiva*, like the constitution of the United States, attempted to remove powers with such tremendous possibilities as far as possible from the hands of a single individual.

The executive to be created was not defined by the *Acta Constitutiva*. Article 15 states, "The supreme power of the executive is placed by the constitution in the 'individual' or 'individuals' who may be chosen, who are residents and native born citizens of any of the states or territories of the federation." This phraseology may be explained by the fact that, since the abdication of Iturbide, the executive power had been lodged in a triumvirate made up of Nicolás Bravo, Guadalupe Victoria and Pedro Celestino Negrete. The opponents of those advocating the federal scheme of government were led by Don Carlos Bustamante, who strenuously advocated a multiple executive.⁸ Dr. Miguel Ramos Arizpe, chief draftsman of the *Acta Constitutiva*, however, admirably advanced the arguments favoring a single executive.⁹

The great powers of the President of the United States are due largely to the lack of specific restriction. The Mexican

⁷Constitution of Spain (1812), Título IV, Capítulo I, Art. 171, Secs. 8-9.

⁸*Diario de los Debates*, April 12, 1824.

⁹*Ibid.*, April 13, 1824.

executive, as defined by the *Acta Constitutiva*, was to be restricted by a careful definition of power.¹⁰ The powers of the king of Spain were similarly enumerated by the constitution of 1812, the example of which undoubtedly influenced the Mexicans.¹¹

The Mexican chief executive was to be granted full control in the nomination and removal of cabinet secretaries. The responsibility of these secretaries was to be to the chief executive, as in the United States, and not to the national congress as in Spain.¹² Similarly in the field of diplomatic and consular affairs the United States was the model followed. The Mexican chief executive was to have control of the appointment of diplomatic and consular representatives, subject to the approval of the senate,¹³ and of the negotiation of treaties, subject in all cases to the approval of the General Congress.¹⁴ The constitution of 1812 likewise granted to the King of Spain the direction of diplomatic and commercial relations with other nations, but did not restrain his action by the necessity of approval by the cortes.¹⁵

The veto and ordinance power of the chief executive best illustrates the leaven of Spanish precedent. The chief executive was to be granted the right of veto and the power to use this privilege at once or within ten days after a measure had been presented to him. A veto, following upon the dissolution of the General Congress, was to suspend the measure until further action had been taken at the next session.¹⁶ Thus the "pocket veto" was guarded against. A similar provision is to be found in the constitution of 1812, save that the king is there granted a period of thirty days within which to approve or disapprove any measure.¹⁷

The ordinance power granted the Mexican chief executive is provided for as follows:

Article 16, Section 14. "The chief executive shall have power

¹⁰*Acta Constitutiva*, Art. 16.

¹¹Constitution of Spain (1812), Título IV, Capítulo I, Art. 171.

¹²*Ibid.*, Título IV, Capítulo I, Art. 171, Sec. 1.

¹³*Acta Constitutiva*, Art. 16, Sec. 10.

¹⁴*Ibid.*, Art. 16, Sec. 11.

¹⁵Constitution of Spain (1812), Título IV, Capítulo I, Art. 171, Sec. 10.

¹⁶*Acta Constitutiva*, Art. 16, Sec. 13.

¹⁷Constitution of Spain (1812), Título III, Capítulo VIII, Arts. 150, 151.

to give decrees and ordinances better to complement the federal constitution and the federal laws."

Article 17. "All decrees and ordinances of the chief executive shall be signed by the secretary of state affected by them and without this signature they are not to be obeyed."

The Constitution of 1812 states:

Título IV, Capítulo I, Section 1. "The king may issue decrees, rules, and instructions which are considered necessary to the execution of the laws."

Título IV, Capítulo VI, Article 225, provides that "All the ordinances of the king shall be signed by the secretary of state to whose department they correspond. No citizen or tribunal shall give credence to them without the satisfaction of this requirement."

Thus it would appear that in the definition of the powers to be granted to the chief executive, in the character of the veto power, and in the ordinance power, the framers of the *Acta Constitutiva* did not vary a great deal from the Spanish constitution.

The *Acta Constitutiva* says little with regard to the organization of the judiciary. It provides that the federal judicial power shall be vested in a supreme court and in "those courts which shall be established in the states."¹⁸ Judgments by special commission, together with retroactive laws are to be abolished.¹⁹ The definition of the field of jurisdiction of the supreme court, together with the creation of inferior grades of courts, is left to the succeeding constitutional convention.

The last two titles of the *Acta Constitutiva* deal with the organization of state governments. As the opening articles of the instrument are but a copy of the provisions of the Spanish constitution of 1812, so the closing articles are but a copy of the provisions of the constitution of the United States. The tripartite division of powers of the federal government was to be extended to the states.²⁰ The legislative power of the states was to be vested in a body which was to be popularly elected after the fashion to be set by the various state constitutions.²¹ The

¹⁸*Acta Constitutiva*, Art. 18.

¹⁹*Ibid.*, Art. 19.

²⁰*Ibid.*, Art. 20.

²¹*Ibid.*, Art. 21.

character of the executive, as in the federal government, was not defined; it was merely stated that the exercise of this power should be for definite periods established by the states.²² The constitutions of the states were to conform entirely to the federal constitution and to the federal laws.²³

In the denial to the states of any control over foreign commerce, over the making of treaties with foreign countries, and over the maintenance of military and naval forces, there is an almost verbatim statement of the provisions of Section 10 of Article I of the constitution of the United States.²⁴ The only marked evidence of Spanish precedent in this connection is the requirement that states should annually transmit to the federal government a statement regarding their finances and regarding the condition of industries within their boundaries.²⁵

Coupled with the assumption that Mexico was a wholesale borrower from the United States there has gone another belief that it was greatly influenced by the political changes within France, and, nearer home, by those within Colombia. Such an assumption does not duly consider the fact that, during the opening years of the nineteenth century, Mexico did not have the same intimate intercourse with Europe that the South American countries did. An examination of the debates of the constituent assembly reveal surprisingly few references to French political changes or to French political philosophy.

The Colombian constitution, adopted at Rosario de Cucuta in 1821, evidences clearly the influence of French political changes. Narino had suffered imprisonment for his translation and publication of the "Rights of Man" in Colombia. Arosemena has pointed out that these "were the sparklings of the French revolution which arose in America in spite of the vigilance of the 'peninsulars' and prepared it for the shock of 1810."²⁶ Furthermore, the Colombian minister at this time occupied a particularly influential position at Mexico City, since Colombia had been

²²*Acta Constitutiva*, Art. 22.

²³*Ibid.*, Art. 24.

²⁴*Ibid.*, Arts. 27, 28, 29.

²⁵*Ibid.*, Art. 32.

²⁶Arosemena, Justo, *Estudios constitucionales sobre los gobiernos de la América latina*, I, 28.

the first to recognize the independence of Mexico. Under the *nom de plume* of Chinchilla he contributed articles to *El Sol* during the year 1823 dealing with local politics, and ridiculed the ceremonies in connection with the Court of Augustin I.²⁷ However, the Centralist faction met with defeat in the constituent assembly in 1824, and, inasmuch as they were the exponents of the Colombian system of government, it appears reasonable to conclude that such French influence as entered into the formation of the *Acta Constitutiva* came indirectly through the influence of France in the formation of the Spanish constitution of 1812.

The influence of Dr. Miguel Ramos Arizpe, chief draftsman of the *Acta Constitutiva* and of the constitution of 1824, has, hitherto, been almost entirely neglected. Arizpe was chairman of the committee on the constitution and the moving spirit in the adoption of the *Acta Constitutiva*. He had previously been the most active of the Mexican delegates in the adoption of the Spanish constitution of 1812. Inasmuch as so little has been written in English about this interesting character, a brief review of his life may not be out of place.

Arizpe was a native of Coahuila and was born February 15, 1775. He was educated at the seminary in Monterey and later received the degree of Doctor of Canon Laws at the seminary in Guadalajara. He then became the parish priest of the villa of Borbón in Nueva Santander. He was elected as a deputy from Coahuila to the Spanish cortes, September 1, 1810, and entered upon his duties March 22, 1811. Because of his ardent support of the constitution of 1812 he was imprisoned in Madrid for twenty months and was subsequently banished for four years to Cartuja de Arachrista in Valencia when Ferdinand VII returned to power. With the return to power of the constitutionalists in 1820, he was released and became a *diputado suplente* in the new cortes. In the same year he became precentor of the cathedral of Mexico City and returned to his native land. By reason of his political experience he was appointed president of "La Gran Commission" following upon the abdication of Iturbide, and presented the *Acta Constitutiva* to the assembled dele-

²⁷Alamán, Lucas, *Historia de Mejico*, V, 764.

gates, November 23, 1823. He subsequently took a leading part in securing the adoption of the constitution of 1824.²⁸

Bancroft says of Arizpe and his connection with the constitution of 1812, "Among the American delegates there was one particularly bright man, the deputy from the 'provincias internas de oriente,' Dr. Miguel Ramos Arizpe, parish priest of the villa of Borbón in the colony of Nueva Santander, now state of Tamaulipas. . . . He was full of spirit, fond of talking and one would never suspect, either from his manner or his dress, that he was a priest. He thought his countrymen too gentle and would often say, 'I am not a Mexican, I am a Comanche,' and he came to be known by that name."²⁹

Into the fabric of any constitution there enter many diverse elements, but it would appear to be clear that in the *Acta Constitutiva*, and in its offspring, the constitution of 1824, the most prominent influences were those of the United States and of Spain. The natural influence of the Spanish connection, together with the bias of the draftsman, have given great prominence to the Spanish element. The direct influence of France and of Colombia at this time were of minor importance, although they were to be of great importance within a decade. There seems little room for agreement with Señor Solórzano, who before the constituent assembly May 25, 1824, declared, "This mania for following others results in the greatest errors. The errors of the Spanish were taken from the French, and those of Venezuela from Spain, and in ours (proposed constitution) we have the errors of Venezuela. In this way instead of one error we have three, and in this I see nothing new, nor useful."³⁰ The *Acta Constitutiva* appears, rather, to be the attempt to inject the federal principle of government, as borrowed from the United States, into an instrument of government essentially Spanish in character.

²⁸Sosa, Francisco, *Biografías de Mejicanos Distinguidos*.

²⁹Bancroft, H. H., *Mexico*, IV, 449-450.

³⁰*Diario de los Debates*, May 25, 1824.